# Hachette v. Internet Archive

2 languages



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***Hachette Book Group, Inc. v. Internet Archive***, 542 F.Supp. 1156 (2023), is a case in which the United States District Court for the Southern District of New York determined that the Internet Archive committed copyright infringement by scanning and distributing copies of books online. Stemming from the creation of the National Emergency Library (NEL) during the onset of the COVID-19 pandemic, publishing company Hachette Book Group alleged that the Open Library and the National Emergency Library facilitated copyright infringement. The case involves the fair use of controlled digital lending (CDL) systems.[1]

On March 25, 2023, the court ruled against Internet Archive, which plans on appealing.[2]

| ***Hachette Book Group, Inc. v. Internet Archive*** | |
|---|---|
| **Court** | United States District Court for the Southern District of New York |
| **Full case name** | *Hachette Book Group Inc., et al. v. Internet Archive, et al.* |
| **Court membership** | |
| **Judge(s) sitting** | John G. Koeltl |

## Background [edit]

The Internet Archive's practice of scanning books and lending them is central to *Hachette v. Internet Archive*.

The Internet Archive is a non-profit organization dedicated to preserving knowledge and based in San Francisco, California; the Archive maintains Open Library, a digital library index and lending system. As many of the works in the Internet Archive are under copyright, the Archive uses a controlled digital lending (CDL) system, a practice that relies upon digital rights management (DRM) to prevent unauthorized downloading or copying of copyrighted works. Open Library can generate digitized material (ebooks) from print copy. The Open Library CDL system ensures that only one digital copy is in use for each print copy or otherwise authorized ebook copy available.

On March 24, 2020, as a result of shutdowns caused by the COVID-19 pandemic, the Internet Archive opened the National Emergency Library, removing the waitlists used in Open Library and expanding access to these books for all readers. Two months later on June 1, the National Emergency Library (NEL) was met with a lawsuit from four book publishers. Two weeks after that, June 16, the Internet Archive closed the NEL,[3] and the prior Open Library CDL system resumed after the 12 weeks of NEL usage.

## Lawsuit [edit]

On June 1, 2020, Hachette Book Group and other publishers, including Penguin Random House, HarperCollins, and Wiley, filed a lawsuit against the Internet Archive for the National Emergency Library.[4][5] The plaintiffs argued that the practice of CDL was illegal and not protected by the doctrine of Fair Use.[6]

Both sides filed motions for summary judgment. Judge John G. Koeltl ruled on March 24, 2023, against Internet Archive in the case, saying the National Emergency Library concept was not fair use, so the Archive infringed their copyrights by lending its ebook copies without the waitlist restriction.[7] The 127 publishers' books in the suit are also available as ebooks from the publishers. The Internet Archive said afterwards it would appeal this ruling, but otherwise would continue other digital book services which have been previously cleared under case law, such as books for reading-impaired users.[8][1][9]

### Press conference [edit]

Shortly before oral arguments, the Internet Archive held a press conference with comments from several people who implied that the issues in this case were much broader than the 127 books specifically named in the suit.[10] All presenters agreed that book publishers need to make money to pay their expenses including authors. The question is whether the National Emergency Library (NEL) actually harmed the publishers.

Lila Bailey, Senior Policy Counsel for the Internet Archive,[11] noted that:

> In the past, publishers stood against microfilm and photocopiers, crying harm. They said they would be harmed by interlibrary loan. They lobbied for decades against libraries being allowed to provide access for the blind and print disabled. They were wrong. It took years, but eventually the law affirmed each of these things, and the public benefitted. With this lawsuit, publishers have repeated those same claims of massive harm from controlled digital lending. ... When asked under oath, their own executives admitted this. ... [They even] instructed their own 950 dollar per hour expert not to even try to measure economic harm. ... On the other hand, when we invited economists from Northeastern University and the University of Copenhagen to look at the sales and library lending data produced in this case, they came to a singular conclusion: The Internet Archive's digital lending had no measurable effect on the market whatsoever.[12]

Bailey's conclusion was supported by other speakers.[13][14][15]

Harvard Law School Professor Lawrence Lessig said that book publishers need to make a profit to serve the public, but the material available to the public should not be limited to what commercial enterprises find profitable. Netflix, for example, offers subscribers access to thousands of movies and television shows but routinely stops offering content for which the demand is too low. That doesn't happen with libraries. Without controlled digital lending, out of print books become essentially unavailable to the vast majority of humanity. "We need access to our past, not just the part of our past that is economically or commercially viable."[16]

### Expert reports [edit]

An expert report filed with the court by Northeastern Econ Prof. Imke Reimers also reported that, "sales in the first five years after an edition's publication account for up to 90% of lifetime sales."[17]

On the other side, University of Chicago computer science professor Ian Foster reported that the Internet Archive's actual CDL practices sometimes violated their claims, lending out more copies than they physically have.[18]

### Final judgment [edit]

While Judge John G. Koeltl issued a summary judgment in favor of the plaintiffs and against the defendant, he *did not* assess damages. Instead, he directed the parties to brief the court on how they think the case should be resolved in a way that comports with the judge's decision that the National Emergency Library was not fair use.[19]

Internet Archive founder Brewster Kahle declared their intention to appeal the ruling,[2] but seems not to have done so while the parties continue to negotiate to try to agree on a procedure to determine the judgment to be entered in this case. The deadline for submitting such a procedure has been extended several times.[20] On July 28 Judge Koeltl granted another extension of the deadline to August 11 but added, "No further extensions."[21]

On August 11, 2023 the parties reached a negotiated judgement. The agreement prescribes a permanent injunction against the Internet Archive preventing it from distributing the plaintiffs' books as well as an undisclosed payment to the plaintiffs. The agreement also preserves the right for the Internet Archive to appeal the previous ruling.[22]

## See also [edit]

- *Authors Guild, Inc. v. Google, Inc.*
- *Authors Guild, Inc. v. HathiTrust*
- Open Library - Hachette v. Internet Archive
- Internet Archive - National Emergency Library, Publishers' lawsuit (*Hachette v. Internet Archive*)

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20. ^ A tutorial on how to find documents in cases in US federal courts, illustrated with this case is available at Wikiversity:Researching US federal court documents. The most recent extension to that deadline as of this writing is available in John G. Koeltl (April 26, 2023), *ORDER granting 197 Letter Motion for Extension of Time* (PDF), United States District Court for the Southern District of New York, Wikidata Q118140236
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## External links [edit]

- Judge Koeltl's ruling on cross-motions for summary judgment
- *Hachette v. Internet Archive* at the Electronic Frontier Foundation
- Court Listener

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